

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JUSTIN HAYNES,

Petitioner,

V.

ALICE PAYNE,

### Respondent.

No. CV05-944P

ORDER DISMISSING PETITIONER'S  
§ 2254 PETITION WITHOUT  
PREJUDICE

This matter comes before the Court on Petitioner’s objections to Magistrate Judge Theiler’s Report and Recommendation (“R&R”) recommending that the Court dismiss Petitioner’s 28 U.S.C. § 2254 petition for writ of habeas corpus. Having reviewed the R&R and Petitioner’s objections, the Court DISMISSES Petitioner’s § 2254 petition without prejudice for the reasons set forth in the R&R.

In his petition, Petitioner challenges his conviction based on an alleged violation of his Sixth Amendment right to confront his accusers, relying on Crawford v. Washington, 541 U.S. 36 (2004), and Bockting v. Bayer, 399 F.3d 1010 (9th Cir. 2005). He has filed a personal restraint petition (“PRP”) in the Washington Court of Appeals asserting this same challenge. He has also filed two other PRPs. All of these PRPs have been consolidated and the Washington Court of Appeals has

1 stayed the action pending a decision by the Washington Supreme Court. As the R&R notes, the  
2 Supreme Court has now issued the awaited decision and therefore it is reasonable to presume that the  
3 Court of Appeals will rule shortly on Petitioner's case. Magistrate Judge Theiler recommended  
4 dismissing without prejudice Petitioner's § 2254 petition for failure to exhaust state court remedies.

5 In his objections, Petitioner challenges Magistrate Judge Theiler's conclusion, arguing that his  
6 habeas petition should be considered on its merits because it would futile to pursue such remedies in  
7 state court since the Washington Supreme Court has ruled that Crawford does not apply retroactively.  
8 Petitioner raised this same argument in the proceedings before Magistrate Judge Theiler. Magistrate  
9 Judge Theiler rejected this argument on two grounds. First, she noted the central importance of the  
10 exhaustion requirement and that a petitioner may not circumvent this requirement merely by showing  
11 that the state courts have rejected similar claims in other cases. Second, she noted that Petitioner has  
12 multiple claims pending before the Court of Appeals and that it would be premature for this Court to  
13 rule on the merits of his habeas petition given the possibility that the Court of Appeals may grant his  
14 PRP on one of these other claims.

15 This Court reaches the same conclusion in reviewing Petitioner's objections. Consequently,  
16 the Court DISMISSES without prejudice Petitioner's § 2254 petition as premature.

17 The clerk of the Court is directed to distribute this order to all counsel of record and pro se  
18 parties.

19 DATED: September 9, 2005.

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s/ Marsha J. Pechman  
22 Marsha J. Pechman  
23 United States District Judge

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